

AUG - 3 1993

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

IN REPLY REFER TO:

August 3, 1993

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

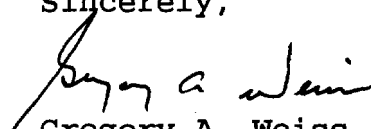
Re: CC Docket No. 93-161

Dear Mr. Caton:

On August 2, 1993, the Common Carrier Bureau filed with your office a pleading in the above-referenced proceeding entitled "Comments on Petition for Clarification." While, in fact, the Bureau perfected service on each of the parties on that date, a certificate of service was inadvertently not included with the pleadings filed with your office. Accordingly, we are today refiling the subject pleading with the certificate of service attached.

We regret any inconvenience this omission may have caused.

Sincerely,

  
Gregory A. Weiss  
Acting Chief  
Enforcement Division  
Common Carrier Bureau

cc: Honorable Walter C. Miller  
Nancy C. Woolf, Esquire  
Charles Helein, Esquire

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**AUG - 3 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC DOCKET NO. 93-161

v.

Pacific Bell,  
Defendant.

File No. E-89-85

TO: The Honorable Walter C. Miller  
Administrative Law Judge

The Acting Chief, Common Carrier Bureau (Bureau), through her undersigned counsel, submits these comments on the "Petition for Clarification" ("Petition") filed by Pacific Bell ("Pacific") on July 14, 1993.

Pacific has asked the Presiding Judge to clarify that the standard to be

~~applied in making an immunity request determination is the two week test set out~~

discretion to apply the "best evidence available" rule<sup>2</sup> in determining whether the testimony of witnesses seeking immunity is required to resolve the issues designated in this proceeding. A requirement that such testimony be "essential" or "absolutely essential" is not only consistent with 18 U.S.C. § 6004 but also better serves the goal shared by the parties, the Presiding Judge and the Commission of expediting these proceedings in an efficient, orderly fashion.

The Bureau believes, however, that there are at least two factors present that warrant early consideration of Pacific's immunity request by the Presiding Judge. First, the alleged misconduct and resultant harm occurred, if at all, several years ago between 1985 and 1988. While the Bureau has no independent knowledge regarding the number or existence of former TMC customers who could testify regarding their cancellation of TMC's service during this timeframe, the location, availability and recollection of any of these customers could be severely limited due to the substantial lapse of time. Second, Pacific has raised as a defense to TMC's complaint the claim that TMC's principal falsified customer records and knowingly submitted documents containing the false information to the Commission to support its complaint. The Bureau believes that Pacific's allegations in this regard raise not only concerns about the veracity of TMC's principal and the credibility of its claims but also serious questions of impropriety that, if unresolved, could threaten to undermine the integrity of the Commission's processes.<sup>3</sup>

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2     See 93M-485, released July 23, 1993 at para. 3.

3     Although the Hearing Designation Order, DA 93-640, did not specifically designate an issue in this regard, the Bureau believes that inquiries into the truthfulness as well as credibility of TMC's submissions to this Commission in this complaint proceeding are properly encompassed by the designated issues.

Because of these important factors, the Bureau respectfully submits that Pacific's immunity request warrants early consideration by the Presiding Judge and Pacific should be permitted to renew its request at the Prehearing Conference. Indeed, given the substantial lapse of time in this case and the serious allegations of impropriety directed at TMC's principal, the testimony of the two witnesses seeking immunity could very well comport with the best available evidence rule. In any event, the Bureau believes that the immunity question should be more fully explored at the Prehearing Conference where Pacific can make a proffer of the evidence to be elicited from the two witnesses.

Respectfully submitted,

Kathleen B. Levitz  
Acting Chief, Common Carrier Bureau

By: Thomas D. Wyatt (Saw)  
Thomas D. Wyatt  
Chief, Formal Complaints and  
Investigations Branch  
Common Carrier Bureau

Gregory A. Weiss  
Gregory A. Weiss  
Acting Chief, Enforcement Division  
Common Carrier Bureau

Date: August 2, 1993

CERTIFICATE OF SERVICE

I, Sandra Gray, do hereby certify on this, the 2nd day of August 1993, I have served copies of the foregoing "COMMENTS" by first-class, U.S. Mail, U.S. Government frank, on the following:

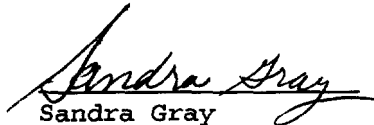
BY HAND DELIVERY

The Honorable Walter C. Miller  
Administrative Law Judge  
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August 2, 1993  
Date

  
Sandra Gray